

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1428 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

VINODBHAI @ DAGADI CHANDUBHAI CHAUHAN

Versus

DISTRICT MAGISTRATE

Appearance:

Ms.BANNA DATTA for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 01/05/2000

ORAL JUDGEMENT

#. The petitioner - Vinodbhai @ Dagdi Chandubhai Chauhan, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by District Magistrate, Kheda at Nadiad, in exercise of powers under Section 3(2) of the PASA Act, dated August

31, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration 6 offences registered against the petitioner. The detaining authority also took into consideration the statements of six anonymous witnesses in respect of six incidents and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The only ground that is raised by the learned advocate for the petitioner in support of the petition is that there is delay in considering the representation. She submitted that the representation was made on behalf of the detenu on February 29, 2000 to the detaining authority and what has happened thereto is not known.

#. Mr. K.T.Dave, learned AGP has opposed this petition. He submitted that the representation made to the detaining authority was received by the detaining authority on 3rd March, 2000 and it was forwarded to the government by the detaining authority on 10th/16th March, 2000 which was received by the State Government on 18th March, 2000. The same was decided by the government on 30th March, 2000.

#. Having regard to the rival side contentions, this appears to be a clear case of delay in forwarding the representation by the detaining authority to the government. The order of detention was passed on August 31, 1999. It must have been therefore approved approved within a stipulated time and when the representation was made and received by the detaining authority, the detaining authority had become functus officio. All that he was required to do was to forward the same to the government for its consideration. In doing so, the detaining authority has taken 13 days. This delay of 13 days has remained unexplained. This would amount to infringement of right of the detenu of making an effective representation as has been held in the case of Navalshankar Dave v. State of Gujarat AIR 1994 SC 1496 so also in the cases of Urmilaben Navnitlal Gandhi v. Commissioner of Police, Surat & others, 1994 (2) GLH 10 (UJ) 10 and Salim Pothiya Belia v. District Magistrate, Mehsana & ors., 1994 (2) GLH 10(UJ) 11. The petition therefore, deserves to be allowed.

#. The petition is allowed. The impugned order of detention dated August 31, 1999 is hereby quashed and set aside. The detenue - Vinodbhai @ Dagdi Chandubhai Chauhan, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-